I:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
Nyakyusa



some pasturage and the fire destroyed two plots of millet. I gave the owner an ox: law.'

The ideal is settlement by agreement; in practice (at the present time) a large number of cases go (like this one) to the chief, and then on to the Native Court. Thence there are many appeals to the Native Appeal Court, the District and Provincial Officers' Courts, and even to the High Court of Tanganyika. As we have indicated, it is likely that fewer cases are settled by arbitration than formerly; but before the coming of the Europeans, chiefs' courts with power to enforce judgement existed, and were used. There was no 'golden age' in which all cases were settled by agreement.

The decision of arbitrators is essentially the judgement of public opinion in the village, or the respective villages, of the disputants. Cases are heard in public, neighbours drop in and join in the discussion, and a decision cannot be given contrary to their expressed opinions.

### 3. *Witness to contracts*

Not only do fellow villagers play a part in settling disputes, they also act as official witnesses in various types of legal transaction. The village headman is an essential witness at an autopsy (*vide supra*, p. 116) and at the distribution of the estate of one of his men. Whenever marriage-cattle are handed over, two or more non-relatives are called upon to serve as witnesses,[1] and these chosen are commonly village neighbours of either the groom or his father-in-law. We heard one man censured by his friends because he had neglected to take a village neighbour with him as witness when he went to summon his son-in-law to his daughter's puberty rites. He had visited his son-in-law's 'best man' (*mwabanya*) as was correct, but had omitted to take a friend with him to witness the conversations that took place. Even in matters that are kept very secret at least one official witness may be summoned. For example, an old man occasionally gives his late permission to sleep with his wives while he is yet alive, and he does so in the presence of a neighbour or senior relative, for though the affair is very private it is absolutely necessary to have a witness to prove that the right was granted.

[1] *Cf.* Godfrey Wilson, 'An Introduction to Nyakyusa Law', *Africa*, Vol. X (1937).

Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
Nyakyusa



This practice of having official witnesses to every contract, and summoning them to give evidence should a dispute later arise, is one of the most important means of maintaining order in Nyakyusa society, and village neighbours are the usual witnesses.

c. *Communal responsibility of the age-village*

Formerly, in Nyakyusa law two forms of group responsibility were emphasized: the mutual responsibility of kinsmen, and the mutual responsibility of fellow villagers. A case of murder or manslaughter was primarily the concern of the agnatic lineage of the victim was a male or an unmarried girl, and of the ages of both husband and father if the victim was a married woman. The kinsmen either killed the murderer, or ought him before the chief, who imposed a fine which went to injured relatives. The Nyakyusa make a distinction between ering by day' (direct physical injury) and 'spearing by night' itchcraft); and only in the latter type of case did the fine go to chief. Witchcraft was thus treated as an offence against the e—the chiefdom—while murder or manslaughter was an nce against the kinsmen of the dead. The concern of the e in witchcraft, and the joint responsibility of kinsmen on one hand, and of fellow villagers on the other, was evident n, as sometimes happened, both groups were required by the f to clear themselves of suspicion of witchcraft by each prong a representative to take the poison ordeal. Should the esentative of either group fail to vomit then the responsible vidual within that group was sought out by means of divinaon and the ordeal (*vide supra*, p. 116).

In a case of adultery the injured husband, together with his kinsmen, pursued and attempted to kill, or torture and kill, the adulterer: self-help was not only permitted but expected in this situation,[1] and a man's near kinsmen were obliged to assist him. Neighbours were not obliged to assist in executing vengeance, but they might be victims of it, for if the injured husband did not find the adulterer he might kill any village-mate of his enemy. Such an attack commonly led to war between the two villages;

[1] D. R. MacKenzie, *The Spirit-Ridden Konde* (1925), p. 61, says: "The injured husband has the right to inflict death on the paramour. This is no mere tale of the past but a grim fact to-day .... cases of this nature are very numerous."

2: Wilson E-5 (1934-1938)1957 FN17 Ngonde FN17
Nyakyusa



success of the ritual, but who do not play any specially defined part. As we have seen, all who are reckoned kinsmen and all fellow villagers must attend a funeral, and a large crowd enhances the status of the kinsmen of the deceased. At a puberty and marriage ritual the 'congregation' is much smaller but is nevertheless important, as is shown by the complaint of the girl marrying a Christian that if she were not initiated she would not be famed. At other rituals all who attend are actors.

The officiants (*abanyago*) for death, puberty and marriage, and birth rituals are almost always elderly women who, by their own choice, have learnt the medicines and observances from some older *anyago* by acting as her assistant. We came across only one man who acted as *anyago* in death and puberty rituals, though at the rituals of spearing, binding with ropes, and protection against sorcery men are more common than women. Often all the elderly women are referred to as '*abanyago*' for 'they help the *anyago*', but the one who has been called upon to provide the medicines and organize the proceedings, and who is paid for her trouble, is clearly recognized. Sometimes she is a kinswoman of the 'owner' of the ritual—if a member of the lineage knows the medicines she will carry out the rituals for all her kin, as did Syungu, wife of Chief Fwoloma's half-brother—but she is not necessarily a relative. It is knowledge, not kinship connections, that qualify her. She is the final arbitrator on procedure, and is insistent on exact observance of the details. Because knowledge of medicines is so important Nyakyusa often refer to the officiant at a ritual as *anyago*, a doctor, but *anyago* is the more precise word since *anyago* has other applications.

On the occasion of prayer in sickness, and in the ritual of reconciliation, no specialist *anyago* is necessary. The senior kinsman of a lineage prays to his shades direct, and a father and his neighbours receive and bless an erring son without the mediation of any priest; but the doctor called in to treat a sick man may press the kinsmen to confess their anger and bless one another (as Mwakisonde did in the case quoted) and come very close to organizing a ritual of reconciliation.

At a marriage ritual there is a 'go-between' (*anyakyala*) representing the bride's father and one representing the groom, and, besides their legal function as witnesses to the passage of cattle, they help the officiant to organize the ritual, and are specifically responsible for conveying invitations to the feasts. The wife of the groom's 'go-